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ABSTRACT

This guide is designed to be an educational resource on federal laws related to race, gender, and national origin. Particular emphasis is placed on Federal Region 8, which serves New York, New Jersey, Puerto Rico, and the Virgin Islands, but much of the information is applicable to public schools throughout the United States. The guide begins with a discussion of the changing configuration of public schools in the United States and the equity implications of these changes. The next two sections describe nine federal laws and two specific regulations, detailing the main purposes of each. Citations are provided to sections of the United States Code or the Code of Federal Regulations. The final section lists some equity resources to help school districts and their personnel get the technical assistance they need. (SLD)

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Equity in Public Schools: The Federal Role

Metro Center for New York University

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Equity in Public Schools:



The Federal Role

THE EQUITY ASSISTANCE
CENTER

NEW YORK UNIVERSITY
SCHOOL OF EDUCATION

EDITED BY
KAREY LOVELSQ



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Equity in Public Schools:
The Federal Role

Edited by
Karla Foy, Esq.

**The Equity Assistance Center
Metro Center for Urban Education
School of Education
New York University**



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METRO CENTER
FOR URBAN EDUCATION
NEW YORK UNIVERSITY

Dear Readers,

This project came about as an Equity Assistance Center (EAC) response to many inquiries and requests for assistance regarding policy, procedures, and laws related to school equity. Developed by EAC, it will serve as an educational resource on federal laws related to race, gender, and national origin. EAC is keenly aware of the difficulties that can arise when school personnel and others do not have easy access to user-friendly information on school equity law.

This guide has been designed to provide only a **starting point** in any legal inquiry. It provides a brief overview of a particular law or regulation and leads the reader to other resources for more in-depth information. Because the law is not stagnant, any specific question or scenario pertaining to the law is highly fact-specific and must be considered as such.

There are many organizations and resources available to help school districts ensure equity for all of their students. From the Office for Civil Rights of the U.S. Department of Education to technical assistance centers and retained private attorneys working for school districts, a wealth of resources exist to help us uphold and ensure the civil rights of all students. In addition, this guide gives all people concerned with equity for all students an easily accessible synopsis of some laws that impact school equity.

Considerable technical and human resources have gone into developing and producing this guide. Of particular note under the lead of Karla Foy, Esq., are the contributions of the entire EAC staff, Dr. LaRuth Gray, Deputy Director, Metro Center for Urban Education, and Julie Sacoder Folk, Metro Center Webmaster, for their editing, suggestions, and support. In addition, Dr. LaMar

P. Miller, Executive Director, Metro Center has endorsed this publication. Finally, it is our hope that this guide will rest on your desk and become dog-eared and scribbled in and worn out because it is such a useful and valuable resource on the basics of school equity law.

Sincerely,

Joan O. Dawson

Dr. Joan O. Dawson, Director
Equity Assistance Center

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Introduction

A myriad of Federal laws substantially impact what occurs in public schools, many of which pertain to the equitable treatment of all students. This guide is intended to provide guidance on Federal law, Federal regulations, and important programs that are related to equity and impact K-12 public education throughout the country. The Equity Assistance Center (EAC) is the organization that researched and compiled this guide. The EAC is a part of the Metropolitan Center for Urban Education at New York University, School of Education. It is one of ten Federal Desegregation Assistance Centers funded by grants from the U.S. Department of Education awarded under Title IV of the Civil Rights Act of 1964. The EAC serves Federal Region B which includes New York, New Jersey, Puerto Rico, and the Virgin Islands. Accordingly, this guide places a particular emphasis upon the laws and regulations of these states and territories. However, much of the information contained in this guide is applicable to all public schools throughout the nation.

Although most of the laws, regulations and programs included have been in existence for some time, many have been revised in recent years in ways that impact the implementation of educational equity for public schools. Further, the advent of widespread utilization of the Internet has greatly increased the number and variety of information sources available for public consumption. Little guidance exists for public schools to ascertain which web sites are reliable sources of information. As such, part of this effort is intended to provide some reliable Internet resources for school district personnel looking for more in-depth information on Federal laws that pertain to equity.

The EAC is integrally involved in educational equity issues related to race, gender, and national origin. It also provides technical assistance to both magnet schools and charter

schools: two types of public schools that are a part of the response to the clamor for more choice in public education. Thus, much of the information included here pertains to these issues. In addition, we provide guidance on educational equity issues related to the disabled in schools, vocational education, and age discrimination. In summary, we have developed this guide to respond to new educational equity issues that have arisen in recent years, to update the information available on federal enforcement of educational equity, and to ensure that all children are attending public schools in places that understand and value their civil rights.

This guide begins with a discussion of the changing configurations of public schools in the United States and the equity implications of those changes. In the next two sections, each law or regulation is briefly described and the main purposes of the law or regulation are detailed. Citations to specific sections of the United States Code, the official compilation of Federal laws, or to the Code of Federal Regulations (CFR), the official compilation of Federal regulations, are also provided. Many of the CFR citations are from the United States Department of Education. Federal regulations expand on the often terse language of laws and provide more extensive guidance on how a particular governmental entity will implement, interpret, and enforce the law. It is important to remember that Federal regulations have the force of law—schools to which the regulations apply are required to comply with the regulations just as they are required to comply with Federal laws that impact educational institutions. In the final section of this booklet, a compilation of some Equity Resources is provided so that school districts and their personnel have access to the wide variety of technical assistance and information available in helping to ensure educational equity.

For further information, please contact the Equity Assistance Center at (212) 998-5100.

**Public Schools
in the
United States**



As we approach the new millennium, public schools in the United States remain a cornerstone of the democratic domain. Public schools stand as one of few institutions in this country situated to bring together a cross-section of a community's children on equal ground in order to achieve a single purpose: education. The most basic aspects of sound, quality education have remained constant—providing all children with meaningful, challenging material in accessible manners across ability levels. However constant the aspects of quality education, public schools have also undergone many changes—in configuration, in structure, in emphasis, and in delivery. Most of these changes have been complex transitions for public schools.

Both the legislature and the judiciary on the State and the Federal levels have provided impetus and support for the evolution of public schools. From *Plessy v. Ferguson*,¹ which judicially sanctioned separate but equal educational facilities and created wholly inequitable educational systems based on race, to *Brown v. Board of Education of Topeka, Kansas*,² which overruled *Plessy* and declared racially separate schools to be inherently unequal, the Supreme Court has shaped the fundamental nature of public education. Today, courts remain integrally involved in the desegregation of public education as school districts continue to grapple with court-ordered desegregation and issues involved in attaining unitary status from those orders. Similarly, the Supreme Court decision in *Lau v. Nichols*,³ which held that school districts must take affirmative steps to overcome educational barriers faced by non-English speakers, solidified the basis for the Federal law pertaining to bilingual education. Today, State and local governments throughout the country are either considering dismantling or have, in fact, begun to dismantle the dominant configuration of bilingual education. The enactment of the Civil Rights Act of 1964 and the Magnet Schools Assistance Program are both testaments to congressional action impacting the evolution of public schools. Similarly, the enactment of Charter Schools legislation in a large number of states is a testament to

State legislative action impacting the evolution of public schools.

Although legislatures and judiciaries have largely crafted and defined these laws, the tireless advocacy of parents and teachers must be neither overlooked nor underestimated. Parents and teachers frequently promote educational change in ways as lasting and important as judicial and legislative changes. For instance, parents are essentially responsible for the enactment of the Individuals with Disabilities Education Act because parents fought to see that their children and others similarly situated would no longer be denied adequate educational opportunities. Similarly, teachers and parents together are substantially responsible for the advent of charter schools, the relatively new autonomous public schools created and run by parents and teachers and community partnerships to address specific community needs outside of the rubric of traditional public schools.

Whether viewed through the lens of the legislative and judicial parameters established over the last 100 years or, the lens of parents and teachers advocating for student's rights, the evolution of public schools is clearly focused on equity. Equity exists when all students have equal access to all educational experiences without regard to race, gender, disability, or national origin.

Today, public schools provide the equalizing force by which all children receive opportunities to learn, achieve, excel, and succeed. As the complexities of the workforce increase due to technological advances as well as the diversity of our population, the need for equitable public education for all children also increases. As such, the first section of this guide is dedicated to two relatively new types of public schools: magnet schools and charter schools. Both of these types of public schools focus in large part on providing enhanced educational opportunity to students. Magnet schools do so as a component of desegregation efforts,

and charter schools do so as a component of community-based local reform efforts.

The advent and increasing successes of magnet and charter schools are important in any discussion of educational equity because, as public schools, they are subject to all Federal and State civil rights laws. However, because they are new types of public schools, some people may be concerned that the application of Federal and State laws might limit or impede the development of these educational reform efforts. Much to the contrary, compliance with Federal civil rights laws can enhance and solidify both the public perception and the growth potential of new types of public schools.

Charter Schools

Charter schools are public schools under contract between a public agency (usually the State in which they are located) and groups of parents, teachers, community leaders, or others. These schools have become increasingly popular across the country as many school community members seek new ways to deliver quality education with the support of public funds, but free from many of the constraints placed upon other public schools. Generally, charter schools are held accountable to the same standards as other public schools in terms of student achievement but, unlike other public schools, they stand to lose their charters (authorization to exist) if they do not achieve the standards. Because charter schools are unique in many ways, they are an emerging area of focus in the educational arena in many respects. In terms of equity, charter schools may pose particular challenges because by their very nature these schools may enroll smaller numbers of students and are considered by some to be more "exclusive" than other public schools.

It is important to recognize at the outset that charter schools are subject to all Federal civil rights laws. They are public institutions that are prohibited from practicing discrimination. Accordingly, a charter school should not recruit in a manner that discriminates against students of a particular race, color, national origin, or sex, or students with disabilities. Instead, recruitment efforts should be designed to effectively reach all segments of the parent population. In addition, charter schools must ensure that parents who are not proficient in English are given appropriate and sufficient information about the charter school and that the information is effectively communicated to these parents. Charter schools must also ensure that information about the charter school is communicated as effectively to parents with disabilities as to other parents.

In terms of admissions, a charter school shall be open to all students on a space-available basis. It shall not discriminate in its admission policies or practices on the basis of intellectual or athletic ability, measures of achievement or aptitude, proficiency in the English language, or any other basis that would be illegal if used by a school district or if contrary to the regulations of the Office for Civil Rights, U.S. Department of Education. Students with disabilities may not be excluded from admission to a public charter school solely on the basis of their disability. Charter schools must also ensure that they do not discriminate on the basis of sex in their programs or activities. Title IX also protects public charter school students from unlawful sexual harassment in school programs or activities (see page 34 for more information on Title IX).

In terms of specific desegregation efforts, when a charter school is in a school district that is under either a Title VI desegregation plan approved by the Office for Civil Rights, U.S. Department of Education, or a court-ordered desegregation plan, the charter school must be established and operated in a manner that is consistent with the desegregation plan. The public charter school may not substantially impede or retard the scope of desegregation.

The Improving America's Schools Act of 1994, Title X, Part C on Public Charter Schools provides for three-year grants to State educational agencies or other eligible applicants upon application to the Department of Education. The purpose of this Federal law is to increase national understanding of charter schools by providing financial assistance for two purposes:

1. The design and initial implementation of charter schools.
2. The evaluation of the effects of such schools, including the effects on students, student achievement, staff, and parents.

Grants under this program may only be used for post-award planning and design of the educational program and initial implementation of the charter school. Finally, and again focused on equity, the very definition of a "charter school" for purposes of this statute requires that schools be in compliance with all of the following: The Americans with Disabilities Act; The Civil Rights Act of 1964; Title IX of the Education Amendments; Section 504 of the Rehabilitation Act; and Part B of the Individuals with Disabilities Education Act (IDEA) (Section 10306(1)(G)). More information about the Federal Charter Schools Grant Program can be found at Sections 10301 to 10307 of Title X of the Improving America's Schools Act of 1994.

The 1997 amendments to the IDEA also include provisions related to charter schools. In essence, these provisions state that local education agency (LEA) charter schools: (1) may opt not to be merged into larger local educational agencies; (2) non-LEA charter schools must receive an appropriate share of IDEA funds; and (3) charter schools are eligible for State discretionary program grant funds.

Within Federal Region B, only New Jersey and Puerto Rico have enacted charter school legislation. The New Jersey charter school statute is called the Charter School Program Act of 1995, P.L. 1995. The New Jersey law was enacted in 1995 and as of this writing, there are 39 charter schools either approved or in operation in New Jersey and 35 charter schools in operation in Puerto Rico. Although there is no charter school legislation currently enacted in New York or the Virgin Islands, such legislation is being considered in New York. The proposed charter school legislation, Bill A 03252 and can be accessed on line at <http://assembly.state.ny.us/cgi-bin/showbill?billnum=A03252>

Check out the following resources for more information on Charter Schools:

- Questions and Answers on the Application of Federal Civil Rights Laws to Public Charter Schools
http://www.uscharterschools.org/res_dir/res_primary/ocr_q&a.htm
- General Charter Schools information:
<http://www.uscharterschools.org/>
- Charter Schools and Special Education Handbook:
http://www.uscharterschools.org/res_dir/res_primary/res_nasdse.htm
- The New York Charter School Resource Center:
<http://www.nycharterschools.org/>
- Puerto Rico Department of Education:
Mr. Angel Melendez, Esq., Executive Director
Mr. Jorge Rivera, Special Assistant
Educational Reform Institute
Puerto Rico Department of Education
P.O. Box 192379
San Juan, P.R. 00919
Phone: (787) 765-9772
- For Information in New Jersey, contact:
Ms. Mary Lynn Fracaroli, Acting Director
Office of Innovative Programs and Practices
NJ State Department of Education
P.O. Box 500
Trenton, NJ 08625-0500
Phone: (609) 292-5850
Fax: (609) 633-9825
- For New Jersey-specific Charter Schools questions and answers, refer to <http://www.state.nj.us/njded/chartsch/apexc.htm>

Magnet Schools

Statute	20 U.S.C. 7201-7213
Regulations	34 CFR Part 280

The Federal Magnet Schools Assistance Program ("MSAP") is a discretionary grant program administered by the U.S. Department of Education. For MSAP purposes, a magnet school is defined as a "public elementary or secondary school...that offers a special curriculum capable of attracting substantial numbers of students of different racial backgrounds." Since 1984 over \$1 billion has been provided to local school districts through this program to provide enhanced instruction as a part of a desegregation effort. The MSAP awards monies based on a competitive grant process that is held every three years. The MSAP provides funds to school districts for the following four purposes:

1. To assist in the desegregation of schools for the elimination, reduction, or prevention of minority group isolation in schools with substantial proportions of minority students.
2. To develop and implement magnet school projects that will assist in achieving systemic reforms and providing all students the opportunity to meet State content standards and State student performance standards.
3. To develop and design innovative educational practices and methods.
4. To develop courses of instruction within magnet schools that will substantially strengthen the knowledge of academic subjects and the grasp of tangible and marketable skills of students attending such schools.

According to the MSAP, schools must be under either a voluntary or a court-ordered desegregation plan to be eligible for funding. Under a voluntary plan, a school district chooses to adopt and effectuate a plan to reduce the segregation of its students. In order to qualify for MSAP funds, the Office for Civil Rights of the U.S. Department of Education must approve the voluntary plan. Under a court-ordered plan, a court⁴ develops a plan to reduce the segregation of students in the district that the district must put into effect. In addition, all Federally funded magnet schools must be designed to bring students from different social, economic, ethnic, and racial backgrounds together.

The MSAP statute further describes specific limitations and prohibitions on the use of MSAP funds. Limitations include that MSAP funds may only be used to acquire books, materials, and equipment and for the payment of teachers and instructional staff if these items are directly related to improving reading skills or content area knowledge. The prohibitions state that MSAP funds may not be used for transportation of students or for any activity that does not augment academic improvement.

The most recent MSAP competition ended in April 1998. At that time, \$96.5 million was awarded under the program to an estimated 60 recipients. The next new MSAP cycle will occur in 2001.

Check out the following resource for more information on the MSAP:

- ♦ Office for Civil Rights publication, "MAGNET SCHOOLS—Promoting Equal Opportunity & Quality Education" Code No. 11, 1991.

Federal Laws



Age Discrimination Act

Statute	42 U.S.C. Sections 6101-6107
Regulations	29 CFR, PART 110 Federal Register July 27, 1993

The Age Discrimination Act of 1975 prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. The law provides that "no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance."

The Act permits specific exceptions to Federally assisted programs and activities, and recipients of Federal funds. Under certain circumstances, a recipient may use age distinctions or reasonable factors other than age, if the factors bear a direct and substantial relationship to the normal operation of the program, activity, or the achievement of a statutory objective. If a recipient operating a program provides special benefits to the elderly or to children, the use of age distinctions is presumed to be necessary to the normal operation of the program.

The purpose of the U.S. Department of Education age discrimination regulations is to set out the Department's rules for implementing the Age Discrimination Act. These regulations apply to any program or activity receiving Federal financial assistance from the Department.

Check out the following resources for additional information on the Age Discrimination Act:

- Federal Register, July 27, 1993, Department of Education, for Regulation for the Age Discrimination Act of 1975.

Americans with Disabilities Act

Statute	42 U.S.C. Sections 12101 et.seq.
Regulations	28 CFR Sections 35-102 to 35-104

Title II of the Americans with Disabilities Act (ADA) provides protections to those with disabilities in public schools. This statute requires that "no qualified individual with a disability shall be excluded from participation in, or denied access to, programs or activities; denied benefits or services or be subjected to discrimination by any public entity." In practice, this means that the disabled cannot be limited in their ability to participate in school programs or activities or denied any benefit or service due to their disability. This law complements IDEA (page 28) in that it applies not only to education and to students, but to all disabled people who utilize any public entity. This law also extends Section 504 of the Rehabilitation Act (page 33) to **all** State or local government services, programs, and activities **regardless** of whether they receive Federal funding.

The ADA is enforced by the Office for Civil Rights, U.S. Department of Education in public elementary and secondary education systems and institutions.

Check out the following resources for more information about the equity provisions of the ADA:

- OCR publication, "Compliance with the Americans with Disabilities Act: A Self-Evaluation Guide for Public Elementary and Secondary Schools."
- U.S. Department of Justice's ADA Information Line at (800) 514-0301 (voice), (800) 514-0383 (TTD). ADA specialists are available to provide technical assistance 10 A.M. to 6 P.M. eastern time Mondays Through Fridays, except Thursdays when the hours are 1 P.M. to 6 P.M. Public school officials can

also contact the ADA National Access for Public Schools Project, funded by NIDRR, at Adaptive Environments, Inc., (800) 893-1225 (voice/TTD).

- ♦ Americans with Disabilities Act Document Center includes ADA Statute, Regulations, ADAAG (Americans with Disabilities Act Accessibility Guidelines), Federally Reviewed Tech Sheets, and Other Assistance Documents, located at <http://janweb.icdi.wvu.edu/kinder/index.htm>
- ♦ ADA Technical Assistance Program, located at <http://www.adata.org>

Civil Rights Act

Statute	42 U.S.C. Section 2000a-d
Regulations	34 C.F. R Part 100

The Civil Rights Act of 1964 is the most prominent civil rights legislation since the Reconstruction. This law was enacted in order to reach the actions of individuals who were violating the civil rights of other Americans. In its entirety, the Civil Rights Act of 1964 encompasses the following: voting rights (Title I); injunctive relief⁵ against discrimination in places of public accommodation (Title II); desegregation of public facilities (Title III); desegregation of public education (Title IV); extension of the Commission on Civil Rights (Title V); prohibition against discrimination in Federally funded programs (Title VI); prohibition against employment discrimination where the employer is engaged in interstate commerce (Title VII); registration and voting statistics (Title VIII); federal intervention and procedure after cases have been removed in civil rights cases (Title IX); establishment of the Community Relations Service (Title X); and miscellaneous provisions (Title XI).

Although Title IV of the Civil Rights Act deals expressly with desegregation of public education, it is Title VI of that Act that provides the basis for nondiscrimination in public education. Title VI of the Civil Rights Act of 1964 provides that "no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Under applicable U.S. Department of Education Regulations, prohibited practices based on Title VI include the following:

1. Providing services, financial aid, or other benefits that are different or provided in a different manner.
2. Restricting an individual's enjoyment of an advantage or privilege enjoyed by others.

3. Denying an individual the right to participate in Federally assisted programs.
4. Defeating or substantially impairing the objectives of Federally assisted programs.

Title VI regulations also prohibit denial of equal access to education because of a student's status as a limited-English proficient student.

Title VII of the Civil Rights Act prohibits discrimination in employment on the basis of race, color, national origin, religion, or sex. The U.S. Equal Employment Opportunity Commission enforces Title VII. A detailed discussion of Title VII is beyond the scope of this document; however, a number of resources for information pertaining to Title VII are included in the "Equity Resources" section that begins on page 49.

The Civil Rights Act of 1964 was amended in both 1988 (the Civil Rights Restoration Act of 1987) and in 1991 (the Civil Rights Act of 1991). The Civil Rights Restoration Act of 1987 responded to a 1984 Supreme Court decision that sought to limit the applicability of Federal anti-discrimination laws. The Restoration Act clarified that anti-discrimination laws generally apply not only to the specific program receiving Federal financial assistance but also to the entire institution of which it is a part. The 1991 amendment changed Title VII of the Civil Rights Act of 1964 to allow for specific types of damages in lawsuits by the employees of private institutions.

Check out the following resources for more information on Title VI of the Civil Rights Act of 1964:

- ♦ OCR publications, "Student Assignment in Elementary and Secondary Schools and Title VI," "The Provision of an Equal Education Opportunity to Limited English Proficient Students," "Education and Title VI," and "Racial Harassment/OCR Investigative Guidance."

Individuals with Disabilities Education Act

Statute	20 U.S.C. Section 1400 et.seq.
Regulations	34 CFR Section 300 et.seq.

The Individuals with Disabilities Education Act, which is commonly referred to as IDEA, was enacted in 1975 and substantially revised in 1997. Prior to 1975, IDEA was known as the "Education for All Handicapped Children Act." IDEA, in its current form, is the predominant force in the Federal regulation of education for those with disabilities.

IDEA requires that in order to receive Federal funds, schools must meet certain minimum requirements for students with disabilities. The basic provisions of IDEA are as follows:

1. To guarantee a "free appropriate public education," including special education and related services designed to meet the unique needs of all children and youth with disabilities.
2. To assure that the rights of children and youth with disabilities and their parents or guardians are protected (e.g., fairness, appropriateness, and due process in decision making about providing special education and related services to children and youth with disabilities).
3. To assess and assure the effectiveness of special education at State and local levels of government.
4. To assist the efforts of State and local governments in providing full educational opportunities to all children and youth with disabilities through the use of Federal funds.

In 1997 IDEA was substantially revised. One important revision relates to provisions for **charter schools**. These

provisions are discussed in greater detail on page 14.

The other revisions to IDEA are extensive and include the following broad topics: funding, student identification, performance goals and indicators, participation in assessments, and disciplinary provisions.

Check out the following resources for more information about the equity provisions of IDEA:

- OCR Publication, "Student Placement in Elementary and Secondary schools and Section 504 and Title II of the Americans with Disabilities Act."
- The Federal Resource Center for Special Education, located at <http://www.dssc.org/frc>
- The Northeast Regional Resource Center (NERRC) (which serves Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island and Vermont), located at <http://interact.uoregon.edu/wrrc/nerrc/index.htm>
- The South Atlantic Regional Resource Center (SARRC) (which serves Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, New Mexico, Oklahoma, Texas, Puerto Rico and the Virgin Islands) <http://www.fau.edu/divdept/sarrc>
- The 1997 revisions to the IDEA are discussed in detail at <http://www.ed.gov/offices/OSERS/IDEA/index.html>

Perkins Act

Statute	20 USC Sec. 2301
Regulations	34 CFR 403

Originally enacted in 1968 and most recently amended in 1990, the Carl D. Perkins Vocation and Applied Technology Act ("the Perkins Act") is a Federal program that funds efforts designed to provide single parents, displaced homemakers, and single pregnant women with marketable skills. The Perkins Act also provides funding for gender equity programs that eliminate sex bias and stereotyping in secondary and postsecondary vocational education and to enable participants to support themselves and their families.

The majority of Perkins Act funds are awarded as grants to State education agencies and are usually identified as "State Basic Grants." State Basic Grants are allotted according to a formula based on states' populations in certain age groups and their per capita income. Eligible recipients for subgrants (grants from the state education agency or the State Board for Vocational Education with these funds) are local educational agencies and postsecondary institutions.

Check out the following resources for more information on the Perkins Act:

- ♦ The U.S. Department of Education web site for the Office of Vocational and Adult Education is <http://www.ed.gov/offices/OVAE/>
- ♦ The National Center for Research in Vocational Education (NCRVE) is the nation's largest center for research and development in work-related education and is funded by the Office of Vocational and Adult Education of the U.S. Department of Education. NCRVE has been headquartered at the University of California at Berkeley since 1988 and works in

consortia with Columbia University, Teachers College, Thomas Bailey, Site Director. The NCRVE website is located at <http://ncrve.berkeley.edu>

- ERIC Clearinghouse on Adult, Career, and Vocational Education provides comprehensive information services in Adult and Continuing Education, Career Education (from childhood to adulthood), and Vocational and Technical Education. This ERIC Clearinghouse is located at College of Education, The Ohio State University, 1900 Kenny Road, Columbus OH 43210-1090. The website is at <http://ericacve.org/>
- The State Directors for Vocational-Technical Education in each state and outlying area help fund vocational-technical education programs and services for youth and adults through the Carl D. Perkins Vocational and Applied Technology Education Act.

The Office of the State Director for New York is:
Office of Workplace Preparation and Continuing
Education (New York)

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- ♦ OCR publication, "Vocational Education & Civil Rights" 1991.

Rehabilitation Act of 1973 Section 504

Statute	29 U.S.C. Section 794
Regulations	34 CFR Part 104, Subparts A, C and D

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of disability in any program or activity of a State or local government that receives Federal funds. In terms of education, this law requires that "no qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance...." This statute is enforced by the Office for Civil Rights, U.S. Department of Education.

As a practical matter, this law is interpreted to mean that in elementary and secondary schools, handicapped students may be assigned to separate facilities or courses of special education only when such placement is necessary to provide them equal educational opportunity and when the separate facilities and services are comparable to other facilities and services.

Check out the following resource for more information on the Rehabilitation Act of 1973:

- OCR Publications, "Discipline of Students with handicaps in Elementary and Secondary Schools," "Free Appropriate Public Education," "The Civil Rights of Students With Hidden Disabilities under Section 504 of the Rehabilitation Act of 1973."

Title IX of the Education Amendments of 1972

Statute	20 U.S.C. Section 1681-1688
Regulations	34 CFR part 106

Title IX of the Education Amendments of 1972 ("Title IX") ensures legal protection against discrimination for students and employees based on sex. This includes protection against sexual harassment in educational institutions receiving Federal financial assistance. Title IX applies to public and private schools, from kindergarten through graduate schools, and covers admissions, recruitment, educational programs and activities, course offerings and access, counseling, financial aid, employment assistance, facilities and housing, health and insurance benefits and services, scholarships, and athletics. Notably, the Sexual Harassment Regulation (see page 45) clarifies that Title IX applies to all school programs whether they occur in school facilities, on the school bus, at a class or program sponsored by the school at another location, or elsewhere. Title IX also protects against discrimination based on marital and parental status.

Specifically, Title IX provides that "no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance...." Title IX is not a part of the Civil Rights Act of 1964 rather, it is an amendment to the Higher Education Act. The Office for Civil Rights, U.S. Department of Education enforces Title IX.

Although segregation of students by sex is generally prohibited by Title IX, there are specific exceptions to this rule. Segregation of students by sex is allowed in the following circumstances:

- In choral music classes, schools may have requirements based on vocal range, which may result in all-male or all-female choruses.

- In elementary and secondary schools, portions of classes that deal exclusively with human sexuality may be conducted in separate sessions for boys and girls but the curriculum must be substantially the same.
- In physical education classes or activities, students may be separated by sex when participating in sports where the activity involves bodily contact, e.g., wrestling, boxing, rugby, ice hockey, football, and basketball.⁶
- Students may be grouped in physical education classes by ability, if objective standards of individual performance are applied. This may result in all-male or all-female ability groups.
- If the use of a single standard to measure skill or progress in a physical education class has an adverse effect on members of one sex, schools must use appropriate standards that do not have such an effect. For example, if the ability to lift a certain weight is used as a standard for assignment to a swimming class, application of this standard may exclude some girls. The school would have to use other, appropriate standards to make the selection for that class.
- Where a school operates separate educational programs or activities for members of each sex in accordance with the exceptions, the school must ensure that the separate course, services, and facilities are comparable.

Check out the following resources for more information on Title IX:

- OCR publications, "Student Assignment in Elementary and Secondary Schools & Title IX," "Equal Opportunity in Intercollegiate Athletics; Clarification of Intercollegiate Athletics Policy Guidance: The three-part Test," "Title IX and Sex Discrimination," "Teenage pregnancy and Parenthood Issues (under Title IX of the Education Amendments of 1972)," "Title IX Grievance Procedures: An Introductory Manual."
- "Balancing the Equation: A Report on Gender Equity in Education," Recommendations of the Gender Equity Task Force to the New Jersey Employment and Training Commission, 1997.
- The U.S. Department of Education list of gender equity resources is at <http://www.ed.gov/offices/ODS/g-equity.html>

Bilingual Education Act

Statute	20 U.S.C. 3283(a)(2); 1401(a)(22)
Regulations	34 C.F.R. Part 300

The first federal legislation regarding bilingual education was the Bilingual Education Act of 1968, which was an amendment to Title VII of the Elementary and Secondary Education Act (ESEA) of 1965. Title VII was reauthorized in 1994 as part of the Improving America's Schools Act of 1994 in a more expansive manner. The reauthorized version of Title VII is entitled, "Bilingual Education, Language Enhancement, and Language Acquisition." Generally, this statute, which ensures that children who are limited English proficient have adequate educational opportunity, is referred to as either "Title VII" or "The Bilingual Education Act."

Title VII is a program that exists in order to increase the capacity of both local school districts and State education agencies to provide programs of bilingual education to limited-English proficient students. Its purpose is the development of full proficiency in English while building achievement in all curricular areas.

The reauthorized version of Title VII provides a new configuration that expands the Act to cover language enhancement and language acquisition programs other than bilingual education. In addition, the reauthorized version of Title VII strengthens the comprehensive approach of funded programs; streamlines program definitions to enhance flexibility; strengthens the State administrative role; improves research and evaluation; and emphasizes professional development.

The enhanced focus on comprehensive programs that include bilingual education is particularly important to local school districts. Here, the legislation seeks to end the fragmentation of bilingual education programs by implementing new discretionary grants intended to ensure that bilingual programs are not isolated from the overall school program. These new discretionary grant programs include the following: development and implementation

grants; enhancement grants; comprehensive school grants; and systemwide improvement grants.

Check out the following resources for more information on the Bilingual Education Act:

- The National Clearinghouse for Bilingual Education at George Washington University, (800) 321-NCBE, on-line at <http://www.ncbe.gwu.edu/>
- U.S. Department of Education, Office of Bilingual Education and Minority Languages Affairs (OBEMLA), on-line at <http://www.ed.gov/offices/OBEMLA/index.html>
- The National Association of Bilingual Education website is located at <http://www.nabe.org>
- East Region, Evaluation Assistance Center, 1730 N. Lynn Street, Suite 401, Arlington, VA, (703) 528-3588.

Women's Educational Equity Act

Statute	20 U.S.C. 7231 (Reauthorized as part of Improving America's Schools Act of 1994)
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The Women's Educational Equity Act (WEEA) was enacted in 1974. The purpose of the law is to make education more equitable for girls and women by providing incentives and guidance to schools and community groups. WEEA was extended in 1978, amended in 1984, and reauthorized in 1988 and 1994. In contrast to Title IX, which provides sanctions for noncompliance with the sex equity legislation, WEEA represents the supportive component: providing funding at all levels of education for programs of national, statewide, or general significance to overcome sex stereotyping and achieve educational equity for girls and women.

The key priorities in the early years of the grant program were Title IX compliance by educational institutions and gender equity for racial or ethnic minorities and women and girls with disabilities. More recently, WEEA grants have focused on gender-based violence and school-to-work issues. WEEA support is provided via WEEA funded grants, the National Advisory Council on Women's Educational Programs (NACWEP), and the WEEA Publishing Center, now the WEEA Equity Resource Center.

Check out the following resource for more information on WEEA:

- WEEA Equity Resource Center
<http://www.edc.org/WomensEquity/>

Equity-Based Regulations



Racial Harassment

Statute	none
Regulations	Federal Register Vol. 59 No. 47, Thursday, March 10, 1994

Similar to the regulation on sexual harassment and its relationship to Title IX, the regulation on racial harassment pertains to one form of racial discrimination that is prohibited by Title VI of the Civil Rights Act of 1964. The Office for Civil Rights of the U.S. Department of Education promulgated the regulation to describe how that office will investigate and analyze racial harassment discrimination.

The regulation provides that conduct is racial harassment in violation of Title VI of the Civil Rights Act in two distinct circumstances. First, if the conduct consists of different treatment of students on the basis of race by district agents⁷ or employees who are acting within the scope of their official duty. Second, if a school district allows a racially hostile environment to be created, encouraged, accepted, tolerated, or left uncorrected, the school district is in violation of Title VI.

Differential treatment involves a student being treated differently than other students based on race without a legitimate, nondiscriminatory reason. In order for differential treatment to constitute racial harassment in violation of Title VI, the treatment must be by an agent or employee of the school district. In addition, the differential treatment must interfere with or limit the student's ability to participate in or benefit from the services, activities, or privileges provided by the school district.

A racially hostile environment exists when the conduct is:

1. Physical, verbal, graphic, or written.
2. Sufficiently severe, pervasive or persistent.

3. Interferes with or limits the ability of an individual to participate in or benefit from the services, activities, or privileges provided by a school district.

The regulation clarifies that the alleged harasser does not have to be a person who is an agent or employee of the school district in cases of a racially hostile environment. Rather, because school districts have a general duty to provide a nondiscriminatory educational environment, any person who creates a racially hostile environment of which the district was aware or should have been aware may subject the district to liability. The Office for Civil Rights will determine if a racially hostile environment exists based on the severity, pervasiveness, or persistence of the alleged conduct, the notice of the alleged conduct, and the district's response to the original complaint.

Other important points emphasized in the regulation are that the victim's race and age will be considered in evaluating the severity of racial incidents, that districts need to have policies and grievance procedures specifically applicable to racial harassment, and that districts have a duty to take reasonable steps to eliminate racial harassment.

Sexual Harassment

Statue	none
Regulations	Federal Register, Vol. 62, No. 49, Thursday, March 13, 1997.

Sexual harassment of students, like other forms discrimination based on sex, is prohibited by Title IX of the Education Amendments of 1972 (see page 34). However, because sexual harassment is so insidious in the manner in which it can affect the educational process and because of the myriad of questions about how to prevent and deal with allegations of sexual harassment, the U.S. Department of Education, Office for Civil Rights, promulgated a set of regulations in 1997 dedicated entirely to this form of sexual discrimination.

This regulation provides educational institutions with guidelines on the standards used to enforce Title IX by the Office for Civil Rights. The regulation also provides guidance on what constitutes sexual harassment and what educational institutions should do to investigate and resolve allegations of sexual harassment of students by school employees, other students, or third parties.

There are two types of prohibited sexual harassment described in the regulation. The first type is **quid pro quo⁸ harassment**. Quid pro quo harassment occurs when a school employee conditions a student's participation in a program or activity or bases an educational decision on the student's submission to unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, or physical conduct of a sexual nature. The second type of sexual harassment is **hostile environment sexual harassment**. Hostile environment sexual harassment is sexually harassing conduct (including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature by an employee, another student, or a third party) that is sufficiently severe, persistent, or

pervasive to limit a student's ability to participate in or benefit from a program or activity, or to create a hostile or abusive educational environment.

The regulation further provides that whether the conduct is sufficiently severe, persistent, or pervasive should be considered both subjectively and objectively. Relevant circumstances in this inquiry include:

- The degree to which the conduct affected one or more students' education.
- The type, frequency, and duration of the conduct.
- The identity and relationship between the alleged harasser and the subject or subjects of the harassment.
- The number of individuals involved.
- The age and sex of the alleged harasser and the subject or subjects of the harassment.
- The size of the school, location of the incidents, and context in which they occurred.
- Other incidents at the school.
- Incidents of gender-based but not-sexual, harassment.

In addition, this regulation provides that schools must have prompt and equitable grievance procedures through which students can complain about any act of sexual discrimination, including sexual harassment. The regulation also provides guidelines for when a school will be liable (legally responsible) for sexual harassment by employees, other students, or third parties. Notably, the Supreme Court recently (in June 1998) decided a case that determined that school districts will not be liable for monetary damages for a teacher's sexual harassment of a student if appropriate school officials did not actually know about the misconduct.⁹

Finally, this regulatory guidance provides important information on what behaviors may constitute legitimate nonsexual touching that is not prohibited by Title IX, sexual harassment directed at gay or lesbian students, when a school is

deemed to have "notice" of alleged sexual harassment, and the First Amendment implications of sexual harassment.

Check out the following resources for more information on the Sexual Harassment Regulations:

- OCR publication, "Sexual Harassment: It's not Academic" U.S. Department of Education, Office for Civil Rights, March 1997. Also available in full text on-line at <http://www.ed.gov/offices/OCR/ocrshpam.html>
- A full copy of the Sexual Harassment Regulation is available on-line at <http://www.ed.gov/offices/OCR/ocrpubs.html>
- Secretary of the U.S. Department of Education Richard Riley's statement on the impact of the Supreme Court's *Gebser* decision is on-line at <http://www.ed.gov/PressReleases/07-1998/lago.html>

Equity Resources



The Office for Civil Rights of the U.S. Department of Education enforces Federal civil rights laws in educational institutions.

For general information or to order one free copy of any OCR publication contact:

U.S. Department of Education

Office for Civil Rights

Customer Service Team

330 C Street S.W.

Washington, DC 20202

Phone: 202-205-5413

Fax: 202-205-9862

<http://www.ed.gov/offices/OCR/>

E-mail: OCR@ed.gov

***The Regional Office for Federal Region B
including NJ, NY, Puerto Rico & Virgin Islands***

Office for Civil Rights, New York Office

U.S. Department of Education

75 Park Place, 14th Floor

NY, NY 10007-2146

Phone: (212) 637-6466

Fax: (212) 264-3803; TTD (212) 637-0478

E-mail: OCR_NewYork@ed.gov

**State and Territorial Departments of Education
for Region B**

New York:

State Education Department

Dr. Richard P. Mills, Commissioner

Education Building

Albany, New York 12234

Interactive Voice Response Phone Number: (518) 474-3852

<http://www.nysed.gov>

New Jersey:

State Education Department

Dr. Leo Klagholz, Commissioner
100 River View Executive Plaza
CN 500

Trenton, NJ 08625
Telephone (609) 292-4469
Fax (609) 777-4099
<http://www.state.nj.us/education/>

Office of Bilingual Education and Equity Issues

Mrs. Iliana Okum, Director
Phone: (609) 292-8777
Fax: (609) 292-1211

Puerto Rico:

Puerto Rico Department of Education

Dr. Victor R. Fajardo, Secretary of Education
P.O. Box 190759
San Juan, PR 00919-0759
Phone: (809) 759-2000
Fax: (809) 250-0275

United States Virgin Islands:

Virgin Islands Department of Education

Mr. Liston A. Davis, Commissioner of Education
Dr. Valeria Wheatley, Insular Superintendent
44-46 Kongens Gade
Charlotte Amalie, VI 00802
Phone: (809) 774-2810
Fax: (809) 774-4679

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Regional Technical Assistance Centers

The Equity Assistance Center at New York University's Metro Center for Urban Education is one of ten Federally funded Desegregation Assistance Centers providing technical assistance to school districts and other responsible educational agencies on issues related to race, gender and national origin.

Equity Assistance Center (EAC)

*serving New York, New Jersey, Puerto Rico,
and the Virgin Islands*

Dr. Joan O. Dawson, Director

Metropolitan Center for Urban Education

New York University

82 Washington Square East, Suite 72

New York, NY 10003-6644

Phone: (212) 998-5100

Fax: (212) 995-4199

<http://www.nyu.edu/education/metrocenter/eac/eac.html>

EAC Resource Center

(EAC's site at Rutgers University)

The Consortium for Educational Equity

36 Street 1603

Piscataway, NJ 08854-8036

Phone: (732) 445-2071

Fax: (732) 445-0027

<http://www.nyu.edu/education/metrocenter/eac/resource.htm>

The New York Technical Assistance Center (NYTAC) at New York University's Metro Center for Urban Education is one of fifteen Federally funded Comprehensive Regional Assistance Centers. These Centers help states, school districts, and schools in meeting the needs of children in high-poverty areas; migratory children; immigrant children; children with limited-English proficiency; neglected or delinquent children; homeless children and youth; Indian children, children with disabilities; and, where applicable, Native Alaskan and Hawaiian children.

New York Technical Assistance Center
serving the New York State Region (Region II)

Dr. LaMar P. Miller, Executive Director
New York University
Suite 72

82 Washington Square East
New York, NY 10003-6680

Phone: (212) 998-5100, (800) 4NYU-224

Toll Free Restrictions: NY residents only

Fax: (212) 995-4199

<http://www.nyu.edu/education/metrocenter/nytac/nytac.html>

Region III Comprehensive Assistance Center
also serving New Jersey in Region II

Dr. Charlene Rivera, Director

The George Washington University
Center for Equity and Excellence in Education

Suite 401, 1730 North Lynn Street
Arlington, VA 22209

(703) 528-3588

(800) 925-3223

Fax: (703) 528-5973

E-mail: r3cc@ceee.gwu.edu

<http://r3cc.ceee.gwu.edu>

Region XIV Comprehensive Assistance Center

*also serving Puerto Rico
and the Virgin Islands in Region II*

Dr. Trudy Hensley, Director
Educational Testing Service
Suite 400

1979 Lakeside Parkway

Tucker, GA 30084

(800) 241-3865

TTY: (770) 934-2624

Fax: (770) 723-7436

E-mail: thensley@ets.org

<http://www.ets.org/ccxiv>

The Regional Laboratories are a network of ten regional laboratories that are funded by the Office of Educational Research and Improvement of the U.S. Department of Education. The purpose of the laboratories is to promote school improvement through the collaboration of researchers with schools and their communities.

The Northeast and Islands

Regional Educational Laboratory

serving New York, Puerto Rico and Virgin islands

Dr. Adeline Becker, Executive Director

Dr. John P. Zarlengo, Executive Director

Education Alliance

Northeast and Island Regional Educational Laboratory at

Brown University

222 Richmond Street, Suite 300

Providence, RI 02903-4226

Phone: (401) 274-9548 (800) 521-9550

Fax: 401/421-7650

<http://www.lab.brown.edu/public/index.shtml>

E-mail: lab@brown.edu

The Laboratory for Student Success

serving New Jersey

Dr. Margaret C. Wang, Executive Director

Contact: Dr. Cynthia Smith, Director of Information Services

Temple University

9th Floor Ritter Annex

1301 Cecil B. Moore Avenue

Philadelphia, PA 19122-6091

(215) 204-3000

(800) 892-5550

Fax: (215) 204-5130

<http://www.temple.edu/LSS>

E-mail: lss@vm.temple.edu

Parent Resource Centers help families get involved in their children's learning. While information and assistance may be provided to any parent, the centers target areas with high concentrations of low-income, minority, and limited-English-proficient parents.

CONNECTIONS

serving New York

Ms. Patricia Edwards, Director

P.O. Box 545

Geneseo, NY 14454

(716) 245-5681

Prevent Child Abuse

serving New Jersey

Ms. Sharon Copeland, Executive Director

Contact: Ms. Dina Lennen, Project Director

Suite 300

35 Halsey Street

Newark, NJ 07102-3031

Phone: (973) 643-3710, (800) CHILDREN

Toll Free Restrictions: NJ residents only

Fax: (973) 643-9222

Regional Resource Centers for Special Education provide technical assistance in the form of consultation, training, and information on special education and related services for individuals with disabilities and their families.

Northeast Regional Resource Center

also serving New Jersey

Trinity College of Vermont

McAuley Hall, 208 Colchestser Avenue

Burlington, VT 05401-1496

Phone: (802) 658-5036

Fax: (802) 658-7435

E-Mail: NERRC@aol.com

South Atlantic Regional Resource Center

serving Puerto Rico and the Virgin Islands

Mr. Tim Kelly, Director

Ms. Isa Polansky-Joseph, Program Coordinator/Information Services

Florida Atlantic University

1236 North University Drive

Plantation, FL 33322

Phone: (954) 473-6106

TTY: (954) 424-4309

Fax: (954) 473-6106

<http://www.fau.edu/divdept/sarrc/sarrc.htm>

E-mail: sarrc@acc.fau.edu

The Northeast Regional Resource Center

serving New York and New Jersey

Dr. Edward R. Wilkens, Director

Institute for Program Development

Trinity College of Vermont

208 Colchester Avenue

Burlington, VT 05450

Phone: (802) 658-5036

TTY: (802)860-1428

Fax: (802) 658-7435

<http://interact.uoregon.edu/wrrc/nerrc/index.htm>

E-mail: nerrc@aol.com

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The National Clearinghouse for Bilingual Education is a Federally funded program offered through the George Washington University, Graduate School of Education and Human Development. NCBE collects, analyzes, and disseminates information related to the effective education of linguistically and culturally diverse learners in the United States.

The National Clearinghouse for Bilingual Education

Dr. Joel Gomez, Director

The George Washington University

1118 22nd Street NW

Washington, DC 20037

Phone: (800) 321-NCBE

Fax: (800) 531-9347, (202) 467-4830

<http://www.ncbe.gwu.edu>

Title VII, Civil Rights Act Resource:

EEOC Home Page: <http://www.eeoc.gov/>

References

- 1 163 U.S. 537 (1896).
- 2 347 U.S. 483 (1954).
- 3 414 U.S. 563 (1974).
- 4 The court that orders a desegregation plan may be a court of the United States, a State court, or another State agency or official of competent jurisdiction that requires school desegregation.
- 5 "Injunctive relief" is a court order that requires a party to act or desist from acting in a particular manner.
- 6 New Jersey law does not recognize these Federally defined "contact sports." *NJAC 6:4*.
- 7 An "agent" as used in this context is a person who acts as the representative of another. In schools, for example, agents may be people who come to substitute teach or to teach or lead special programs.
- 8 "Quid pro quo" is a Latin phrase meaning "this for that."
- 9 *Gebser v. Lago Vista Ind. School District*, 96-1866.